Supreme Court, U.S.
FILED

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No.

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# IN THE
# SUPREME COURT of the UNITED STATES
## OCTOBER TERM, 1995

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**EDITH BEASLEY,**
*Petitioner,*

**vs.**

**COMMONWEALTH EDISON COMPANY,**
*Respondent.*

---

**PETITION FOR WRIT OF CERTIORARI**
**TO THE ILLINOIS SUPREME COURT**

Andrey Filipowicz
100 West Monroe
Suite 1401
Chicago IL 60603
312/578-1211

*Attorney for Petitioner*
*EDITH BEASLEY*

## QUESTIONS PRESENTED FOR REVIEW

1. The Illinois Courts have articulated a standard interpreting and applying those provisions of the Illinois Code of Civil Procedure and the Illinois Supreme Court Rules dealing with Post-Trial Motions, and Extensions of Time for filing same, which, as applied to this case, have served to deprive Petitioner of her rights to due process, pursuant to the Fifth and Fourteenth Amendments to the Constitution of the United States.

2 .Petitioner has a meritorious underlying claim for Appellate Review, which has been extinguished by an improper application of procedures governing Post-Trial Motions.

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No.

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# SUPREME COURT of the UNITED STATES
## OCTOBER TERM, 1995

**EDITH BEASLEY,**

*Petitioner,*

vs.

**COMMONWEALTH EDISON COMPANY,**

*Respondent.*

## PETITION FOR WRIT OF CERTIORARI TO THE ILLINOIS SUPREME COURT

The Petitioner Edith Beasley respectfully prays that a writ of Certiorari issue to review the judgment and opinion of the Illinois Supreme Court entered in this proceeding entered on June 1, 1995, denying Petitioner's Petition for Leave to Appeal.

## OPINION BELOW

The Order of the Supreme Court of Illinois, and the Opinion of the Illinois Appellate Court appear in the appendix hereto.

## JURISDICTION

The judgment of the Illinois Supreme Court, affirming the Illinois Appellate Court's order dated, was entered on the First Day of June, 1995. The jurisdiction of this Court is invoked pursuant to Title 28 United States Code, Section 1254.

## CONSTITUTIONAL PROVISIONS INVOLVED

The Fifth and Fourteenth Amendments to the Constitution of the United States appear in the appendix hereto.

## STATEMENT OF THE CASE

On January 20, 1985 the temperature in Chicago fell to minus 27 degrees Fahrenheit, setting a record as the coldest day in the history of the City of Chicago. On that day Commonwealth Edison cut off electricity to a building owned by Petitioner.

Petitioner later filed a lawsuit in the Circuit Court of Cook County against Commonwealth Edison for damages caused to her 53 unit apartment building when Commonwealth Edison shut off the electric power in subzero weather conditions, on the eve of the Martin Luther King holiday. Said shut off was in violation of applicable Illinois Administrative

Regulations, which prohibit termination of electric service in subzero weather conditions, without prior notice, and on the eve of a weekend or holiday.

The jury awarded Petitioner a judgment in the amount of $21,780 in damages on October 23, 1992 on Count II of the Complaint, which sounded in negligence.

This amount represented what the jury had determined to be Petitioner's compensation for the diminution in the value of the home, offset by the jury's finding that Petitioner was 40 per cent contributorily negligent. Thirty days later, Respondent filed a motion for judgment notwithstanding the verdict. After the jury decision, Petitioner sought unsuccessfully to have the jury monetary award reviewed as it is Petitioner's contention that the loss occassioned by Respondent's interruption of service was in excess of $250,000.00. Further, the trial court had ruled against Petitioner's motion for punitive damages. Petitioner sought review of said decision as well.

During the pendency of said motion, but after the passage of thirty days from the date of the jury's verdict, Petitioner's counsel filed a motion to withdraw, and was granted leave to withdraw. Thereafter, Petitioner obtained substitute counsel, and inter alia, filed a motion for an extension of time in which to file her own post-trial motion, which was supported by

an affidavit stating that the irreconcilable differences that had arisen between Petitioner and her previous counsel, and which had led to his motion to withdraw, had centered precisely on Petitioner's desire to perfect an appeal from the jury's verdict of not guilty as to count I, its finding of contributory negligence against Petitioner, as well as the sufficiency of the amount of compensatory damages awarded to Petitioner.

Commonwealth Edison's Motion for Judgment Notwithstanding the verdict had not been noticed for hearing as of February 9, 1993, when Petitioner's former counsel was granted leave to withdraw. Petitioner retained new counsel on March 10, 1993. (C-365).

On March 25, 1993, pursuant to Supreme Court Rule 184, Petitioner filed her Motion for Hearing on Defendant's Motion for Judgment Notwithstanding the Verdict, and her Motion for an Extension of Time in Which to file her Post-Trial Motions. (C-367,374).

Petitioner's Motions were heard by the trial court, which denied her motion for an extension of time, but conditionally allowed her leave to file her Post-Trial Motion for New Trial and Other Relief, which was denied, as was Defendant's Motion for Judgment Notwithstanding the Verdict, which had been called for a hearing by Petitioner.

Petitioner filed her Notice of Appeal within thirty days of said Order, on June 16, 1993. (C-406). On June 22, 1993 Defendant filed its Notice of Cross-Appeal.(C-411). The Appellate Court of Illinois affirmed the Decision of the Trial Court, and on June 1, 1995 the Supreme Court of Illinois denied Petitioner's Petition for Leave to Appeal.

## REASONS FOR GRANTING THE WRIT

1. The Illinois Courts have articulated a standard interpreting and applying those provisions of the Illinois Code of Civil Procedure and the Illinois Supreme Court Rules dealing with Post-Trial Motions, and Extensions of Time for filing same, which, as applied to this case, have served to deprive Petitioner of her rights to due process, pursuant to the Fifth and Fourteenth Amendments to the Constitution of the United States.

Petitioner respectfully submits that the statute governing the time limits for filing of Motions for New Trial, as applied by the Trial Court, the Illinois Appellate Court and the Illinois Supreme Court in the instant cause is unconstitutional, as they serve to bar appellate review of meritorious issues, even though Petitioner presented good cause for an extension of time in which to file her post trial motion.

Further, Petitioner respectfully submits that the Illinois reviewing courts erred in ignoring the evidence of record in this cause, which showed that Petitioner had attempted to preserve her rights to pursue a motion for new trial and appellate review of the jury's verdict. The U.S. Constitution, through the Due Process Clause, protects individuals from the arbitrary exercise of the powers of the government. West Coast Hotel Co. v.

Parrish 300 U.S. 379, 399, 57 S.Ct. 578, 585 (1986). Petitioner's constitutional rights have been denied due to the arbitrary exercise of power of the Illlinois courts.

As a general rule, Illinois law provides that a trial court loses jurisdiction 30 days after the entry of a final judgment providing no post trial relief or notice of appeal are timely filed. Bell v. Hill 648 N.E.2d 170, 173 (Ill.App. 1 Dist. 1995). However, jurisdiction may be revested in the trial court under certain circumstances. Id. One such circumstance is when the parties have actively participated in proceedings which are inconsistent with the circuit court's prior order. Id. Such circumstances include when a party files a responsive pleading to an opponents post trial motion.

In the present action, Mrs. Beasley took every step possible to attempt to actively participate and overturn the circuit court's prior order. Unfortunately, Mrs. Beasley and her trial counsel had irreconcilable difference and Mrs. Beasley was unable to immediately to secure substitute counsel. Her trial counsel failed to tell Mrs. Beasley of the need to secure immediate substitue counsel or that she must make her post-trial filing within 30 days. When it became apparent to Mrs. Beasley she could not work with the trial counsel, she immediately sought alternate counsel. She submitted her case to another counsel who took the matter under review, but failed to decline representation until only days before the 30 day filing limit was

exhausted. Mrs. Beasley continued to look for an attorney after this second counsel declined representation. She continued to have difficulty and only finally obtained counsel through a bar referral service. Mrs. Beasley took all these actions with the intention of appealing the judgment or fighting the post-trial motion of Edison.

Within one week of obtaining her third attorney three motions were filed including a motion for leave to file appearance of substitute trial counsel, a motion to call Edison's post-trial motion for hearing a and motion for an extension of time to file Petitioner's own post trial motions.

Significantly, the circuit court made rulings with respect to the motion for substitution of trial counsel and motion to call opposing counsel's post-trial motion but claimed that it had no jurisdiction for the extension of time filing. Furthermore, the post-trial motion of Edison was recalled and actively defended by Mrs. Beasley. Thus clearly, under Bell v. Hill revesting jurisdiction in the circuit court for Mrs. Beasley to appeal.

The Illinois Supreme Court's failure to find a revestment of jurisdiction with respect to Mrs. Beasley, has deprived Mrs. Beasley of her due process rights under the United States Constitution. Mrs. Beasley defended against Commonweath

Edison's post trial motion for a judgment not withstanding the verdict. She further wanted to protect her rights by filing her own post trial motion for a new trial. Mrs. Beasley never had that opportunity because the Illinois Supreme Court denied her Due Process rights protected under the United States Constitution, by failing to find that the trial court did indeed have jurisdiction to extend the time in which Petitioner could file her post trial motions, thereby effectively denying her rights to appeal and contest the jury's verdict, while Edison's Motion attacking said verdict was pending and undecided.

When state action passes the bounds of reason and assumes the character of merely arbitrary, such action is invalid. DeShaney v. Winnebago county Dept. of Social Services 109 S.Ct 998, 1011, 489 U.S. 189 (1989). The ruling of the Illinois Supreme Court as applied to Mrs. Beasley grossly violates her rights of due process by depriving her property without due process of law. The decision of the Illinois Court is arbitrary, allowing jurisdiction for some matters and disallowing for others, without a rational basis. Mrs. Beasley had a right to be heard, she made an extraordinary attempt to be heard but was rebuffed by the Illinois Appellate Court and the Illinois Supreme Court in contravention of all the available evidence indicating an unjust, unfair and unconstitutional decision was being enforced.

The failure of the Supreme Court of Illinois to allow Mrs. Beasley to file her post-trial motions is reversible error. The circuit court clearly had revested jurisdiction in the matter having made decisions which obviously required a jurisdictional basis on other motions presented by Mrs. Beasley at the same time.

The failure of the Illinois Supreme Court to recognize the jurisdiction of the circuit court and allow Mrs. Beasley's claims to be addressed on the merits has deprived Mrs. Beasley of her basic due process rights under the United States Constitution. It is therefore, incumbent on this Court to right the wrong which has been perpetrated on Mrs. Beasley and find that the Illinois Supreme Court ruling, as applied to Mrs. Beasley is unconstitutional.

2. Petitioner has a meritorious underlying claim for Appellate Review, which has been extinguished by an improper application of procedures governing Post-Trial Motions.

Petitioner has been deprived of a review of a claim that is both meritorious and significant. In her proposed Post-Trial Motion and the issues subsequently raised by her on Appeal, Petitioner sought damages for an egregious and inexcusable breach of a Public Utility's duty to a consumer. As a result of Edison's interruption of electric service on a bitterly cold day, which the jury in the instant case found to be culpably negligent, Petitioner lost not only a building and the opportunity to make a

having made decisions which obviously required a jurisdictional basis on other motions presented by Mrs. Beasley at the same time.

The failure of the Illinois Supreme Court to recognize the jurisdiction of the circuit court and allow Mrs. Beasley's claims to be addressed on the merits has deprived Mrs. Beasley of her basic due process rights under the United States Constitution. It is therefore, incumbent on this Court to right the wrong which has been perpetrated on Mrs. Beasley and find that the Illinois Supreme Court ruling, as applied to Mrs. Beasley is unconstitutional.

2. Petitioner has a meritorious underlying claim for Appellate Review, which has been extinguished by an improper application of procedures governing Post-Trial Motions.

Petitioner has been deprived of a review of a claim that is both meritorious and significant. In her proposed Post-Trial Motion and the issues subsequently raised by her on Appeal, Petitioner sought damages for an egregious and inexcusable breach of a Public Utility's duty to a consumer. As a result of Edison's interruption of electric service on a bitterly cold day, which the jury in the instant case found to be culpably negligent, Petitioner lost not only a building and the opportunity to make a profit, she lost her dream of bettering her community .

## APPENDIX

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78900

**Illinois Supreme Court**
**Juleann Hornyak, Clerk**
**Supreme Court Building**
**Springfield Il 62706**
**(217) 782-2035**

June 1, 1995

Mr. Andrey Filipowicz
Attorney at Law
100 West Monroe,
Suite 2222
Chicago IL 60603

**No. 78900-Edith Beasley, petitioner, v. Commonwealth Edison Company, respondent.**
Leave to appeal, Appellate Court, First District.

The Supreme Court today DENIED the petition for leave to appeal in the above entitled cause

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The mandate of this Court will issue to the Appellate Court on June 23, 1995.

SECOND DIVISION
FEBRUARY 28. 1995

1-93-2243.

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# IN THE
# APPELLATE COURT COURT of ILLINOIS
## FIRST JUDICIAL DISTRICT

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| | |
|---|---|
| **EDITH BEASLEY,** | ) |
| *Plaintiff-Appellant,* | ) |
| v. | ) |
| | ) |
| **COMMONWEALTH EDISON** | ) |
| **COMPANY,** | ) |
| *Defendant-Appellee,* | ) |
| *Cross-Appellant.* | ) |

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**ORDER**

On February 6, 1987, plaintiff, Edith Beasley ("Beasley"), filed suit against defendant Commonwealth Edison ("Edison"), alleging that Edison, in breach of contract

(Count I) and through its negligence (Count II), caused her damages by shutting off the electric power to her 53 unit apartment building (the"building") located at 3124 West Franklin Boulevard, in Chicago.

The jury ruled against Beasley on Count I, but in her favor on Count II, and awarded her $21,780 in damages, representing the diminution in the value of her property minus Beasleys 40% contributory negligence.

After the jury returned its verdict, the following procedural events occurred: On October 223, 1992, the trial court entered judgment on the jury's verdict; on November 23, 1992, Edison filed a post-trial motion; on December 3, 1992, Beasley responded to that

post-trial motion; on February 9, 1993 Beasley obtained leave to substitute counsel; on March 25, 1993, Beasley filed a motion requesting an extension of time within which to file her own post-trial motion; and finally, on May 21, 1993, after ruling that Beasley failed to file her motion for an extension of time within the 30-day time period prescribed by law (735 ILCS 5/2-1202(c) (West 1992)), the court nevertheless conditionally allowed her to file her post-trial motion, but subsequently denied it and Edisons as well.

Beasley filed a timely appeal, contending that the trial court erred in ruling that her post-trial motion for an extension of time was not timely filed. She further contends that the

jury's verdict as to Count I was against the manifest weight of the evidence, her damage award under Count II was inadequate, and that the jury should not have found her to be comparatively negligent.

On cross appeal, Edison contends that the damages awarded to Beasley were speculative and unsubstantiated.

The following evidence was adduced at trial: Beasley purchased the builiding on October 2, 1984. Both she and her son Leonard Beasley, ("Leonard"), rehabilitate dilapidated buildings for profit. As she had done for all of the other property she rehabilitated, Beasley requested that Edison turn on electric service for the buliding. A few days later, to

Beasley's surprise, Edison asked her to furnish certain documentation regarding that building. Accordingly, Beasley, on or about December 5, 1984, went to one of Edison's offices and had her sales contract and her drivers license Xeroxed. Thereafter, Edison requested more documentation of Beasley, never explaining to her that it was attempting to verify her ownership of the building.

Before Beasley responded to Edison's second request for documentation, it disconnected electric service to the building without giving her any notice, warning, or explanation. On December 18, 1984, she went to Edison's Polk Street office, and after her deed to the building and her sales contract were examined and

eroxed, electric service was restored to the building.

Beasley later received a "billing statement"[1] for the building covering the period of October 16, 1984, through January 7, 1985; it further indicated that she would be billed for electric service at a later date. Beasley stated also that Edison never asked her for a cash deposit, or indicated that there were past due electric bills associated with the building.

On January 11, 1985, after Beasley discovered that Edison had again turned off service, she telephoned the company and requested that it re-commence service to the building, but Edison refused to do so.

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[1]According to Edison, this "billing statement" was not a bill because no actual payment was requested, nor was a due date given.

Beasley then sent a mail-gram to Edison's president, threatening to sue if service was not restored to the building immediately.

Service was not resumed until January 28, 1995, but in the interim, because of extremely cold temperatures, combined with the lack of electricity, and therefore lack of heat, the building's water pipes froze, causing severe damage, further, because the freezing temperatures in the building forced the building's "care-takers" to leave, it was vanadalized and looted.

After the January 11, 1985 "cut-off," Beasley received an electric bill totalling $670.97, covering a 112-day period, beginning in October, 1984, and with a due date in February, 1985. Leonard's testimony corroborated Beasley's, and both testified

to damages and the steps they took to mitigate them.

Nickolas Moesch("Moesch"), one of Edison's commercial analysis clerks, testified that before resuming service to a property that has a poor credit history and prior service disconnections, followed by unauthorized re-connections, as in this case, Edison requires proof regarding a change in the ownership before resuming service.

Contrary to Beasleys testimony, Moesch testified that Edison's records indicated that on December 17, 1984, Beasley, although furnishing a sales contract, did not allow it to be Xeroxed. Moesch stated that Beasley's name was not on the sales contract and that she would not let it "out of her hands." He explained, however, that

even though Beasley had failed to provide Edison with the proper documentation, he allowed service to be restored to the building at that time because of his reliance on Beasleys "good faith[,] and [her] promise that she would bring in the proper documents;" but he continued, Beasley's name was not, and would not,be placed on the building account until she provided Edison with proper evidence of her ownership of the building. He also testified that because Beasley informed Edison that as of October 16, 1984, she was the new owner of the building, the company made the necessary billing adjustments to ensure that she, instead of the previous owner, would be billed for service from that day forward.

On January 11, 1985, Moesch ordered that electric service be disconnected

because Beasley, contrary to her promise, had not provided Edison with the required documentation; he further ordered that service not be restored until she did so. Moesch explained that Edison did not notify Beasley of this January 11, 1985 "cut-off," because her name was not officially on the building account. Additionally, he maintained that he was unaware of Beasley's other accounts with Edison and that the investigation of the matter did not include searching for such information, as opposed to Beasley's testimony that Edison, prior to the January 11, 185 "cut-off" had called her twice, and had sent her a billing statement.

A few days after the "cut-off" Edison received documentation of Beasley's ownership of the building, but it did not restore service until January 28, 1985.

According to Moesch, the delay was caused by the drastic measures Edison undertook to disconnect service on January 11, 1985, in order to deter further unauthorized re-connections.

In appealing a jury verdict, a post-trial motion is necessary to preserve an issue for review. (Samuelson v. Wyman (1991), 222 Ill. App. 3d 452, 457, 584 N.E. 2d 175, 179.) Furthermore, section 1-1202(c) of the Code of Civil Procedure states:

"Post-trial motions must be filed within 30 days after the entry of jusgment or the discharge of the jury *** or within any further time the court may allow iwthin the 30 days or any extension thereof." 35 ILCS 5/2-1202(c) (West 1992).

In Samuelson a judgment was entered on the verdict on August 12, 1987. On motions filed by all three parties on September 8 and 11, 1987, the trial court extended the deadline for the filing of post-trial motions for the City of Chicago ("City")-a third party defendant-and the two other parties, to November 10, 1987. On November 10, 1987, and again on December 1, 1987, the trial court extended the deadline for the other two parties but not for the City, which did not rqeuest an extension. On December 8, 1987, on motion, the trial court extended the deadline for the other two parties to January 21, 1988, and it also granted the City's request to be included in this last extension, which it met. Samuelson 222 Ill. App. 3d at 456 - 458, 584 N.E. 2d at 177-178.

On appeal, this court held that the trial court erred in allowing the City to be included in the last extension of the deadline for the filing of the post-trial motions. We concluded further that, in failing to meet the November 10, 19 deadline, or to obtain an extension on or before that date, the City could not rely on the timely and successful post-trial motions of the other parties; thus, it waived review of the issues contained within its post-trial motion on appeal. Samuelson, 222 Ill. App. 3d at 458, 584 N.E. 2d. at 179.

Beasley contends that her case is distinguishable from all the cases cited by Edison, including Samuelson, because those cases "do not examine the legal sufficiency of a motion for an extension of time in which to file [a] post-trial motion, made

more than thirty days after entry of a judgment order, but before entry of a final order."

However, in Samuelson, after the expiration of the court's initial extension of the 30-day time period, but before the entry of a final order, the City moved the trial court for an extension of time within which to file its post-trial motion. There, as mentioned above, we held that the trial court erred in granting that motion. Samuelson, 222 Ill. App. 3d at 456-58, 584 N.E. 2d. at 178-79.

Alternatively, however, plaintiff advances two somewhat overlapping theories: First, that her case falls within the "substantial justice " exception to section 2-1202(c) because "irreconcilable diffrences" existing between herself and her

trial counsel prevented her from filing a timely post-trial motion; and second, that those same "irreconcilable differences" constituted "good cause" under Supreme Court Rule 183.[1] (134 Ill. 2d R. 183; Rule 183 (West 1993).) We disagree with both contentions.

As an exception to section 2-1202(c), a court, even after the 30- day period (or any extensions thereof), may "alter, modify, or set aside its judgment with the consent of the parties." Krotke v. Chicago R.I. P.R. Co.(1974) 26 Ill. App. 3d 493, 496, 32

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[1]Supreme Court Rule 183 reads:
"The Court, for good cause shown on motion after notice to the opposite party, may extend the time for filing any pleading or the doing of any act which is required by the rules to be done within a limited period, either before or after the expiration of the time. " 134 Ill. 2d R. 183; S.Ct. Rule 183(West 1993).

N.E. 2d 212, 214.) Additionally, once either party files a timely post-trial motion, a court may act sua sponte on any error it feels must be remedied "to do substantial justice between the parties." Wheeler v. Sunbelt Tool Co. (1989), 181 Ill. App. 3d. 1088, 1097, 537 N. E. 2d 1332, 1339; see also Freeman v. Chicago Transit Authority (1965), 33 Ill. 2d 103, 105-106, 210 N. E. 2d 191, 193-194; Minfield v. Bernardi (1984), 122 Ill. Ap. 3d 97, 100 460 N.E. 2d 766, 768; Welch v. Ro-mark, Inc. (1979), 9 Ill. App. 3d 652, 657, 398 N.E. 2d 901, 904.

Allowing a court of general jurisdiction the power to modify its judgment to do "substantial justice" is consistent with the general policy supporting the time limit contained within section 2-1202(c), as is "the inherent power

of courts of general jurisdiction to enter orders modifying or vacating their judgments pursuant to the express consent and agreement of all the interested parties. " Krotke, 26 Ill. Appl ed at 496, 32 N.E. 2d at 215) Beasley fails to persuade us that her case falls within the ambit of these exceptions, nor does she present us with any authority compelling the creation of another exception applicable to her case. Additionally, Rule 183 rulings will not be overturned absent the trial court's abuse of discretion. Premier Elec. Constr. Co. v. Morse/Diesel (1993), 257 Ill. App. 3d 445, 454 628 N.E. 2d 1090, 1997.

The record indicates that before the trial court granted Beasley leave to secure additional counsel, her original counsel

filed a timely response on December 3, 1993, to Edison's post-trial motion, and he did not move to withdraw until February 2, 1993. Beasley did not request leave for an extension of time to file her own post-trial motion until March 25, 1993. There is nothing in the record to suggest that the "irreconcilable differences" between Beasley and her counsel at the time led to a refusal on his part to file a post-trial motion as timely as the response he filed to Edison's post-trial motion.

Accordingly, we conclude that the "irreconcilable differences" Beasley advances don not amout to a showing of "good cause, nor do they bring her case within the "substantial justice" exception to section 2-1202(c). Consequently, since Beasley failed to file a timely motion for an

extension, she has waived review of the issues contained within her proposed post-trial motion.

On cross-appeal, Edison contends that the jury's verdict was based on speculation and conjecture because Beasley failed to provide, for examle, appraisal evidence or comarable sales evidence upon which the jury could calculate her damages. (Joliet v. Fox (1907) 135 Ill. App. 444, 447.) At trial, Edison objected to Beasley's testimony, stating that it was insufficient to support a claim for damages, but was overruled.

A jury's award as to damages will not be disturbed unless it is against the manifest weight of the evidence. (Montgomery v. Chicago 134 Ill. App. 3d 499, 502-503, 481 N.E. 2d 50, 53). Moreover, an owner, merely by virtue of her ownership, is

qualified to express her opinion in a negligence action regarding the value of her property. (American Nat'l Bank Trust Co. v. North Chicago (1988) 155 Ill. App. 3d 970, 92-4, 508 N.E. 2d 1111, 1112-113; see also Department of Transportation v. Harper (1978) 64 Ill. App. 3d 732, 381 N.E. 2d 843). This is so because ownership usually indicates a knowledge of the purchase price, income received from it and its potential use. American Nat'l Bank & Trust Co. 155 Ill. App. 3d at 92-4, 508 N.E. 2d at 1112-113.

Here, Beasley laid a proper foundation for her opinion as to the damages she sustained to her property due to Edison's negligence; specificially , she testified that 1) she purchased, rehabilitated, and sold a number of buildings over a 30 year

period; 2) the damages caused by the freezing, and subsequent thawing of the water pipes, as well as the damages caused by the looting of the building were extensive; and 3) after speaking with an outside contractor, she opted against repairing the building because of the cost of repair exceeded the benefit that could be derived therefrom. Therefore, the judgment of the circuit court in both appeals is affirmed.

Affirmed.

SCARIANO, P. J., with HARTMAN and DIVITO, JJ., concurring.

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT - LAW DIVISION

| | | |
|---|---|---|
| EDITH BEASLEY | ) | |
| | ) | |
| Plaintiff, | ) | |
| | ) | |
| vs | ) | No.87 L 2819 |
| | ) | |
| COMMONWEALTH | ) | |
| EDISON COMPANY | ) | |
| | ) | |
| | ) | |
| Defendant. | ) | |

**AFFIDAVIT**

I, Edith Beasley, depose and state as follows:

1. That I am the Plaintiff in the above captioned cause.

2. That I make this affidavit based upon my personal knowledge.

3. That this cause came for hearing for trial, and said trial was concluded on October 22, 1992.

4. The Court entered its Judgment Order on October 23, 1992.

5. That Defendant Commonwealth Edison filed its motion for judgment notwithstanding the verdict on November 23, 1992, and Plaintiff filed her response to said Motion on December 3, 1992.

6. That on February 9, 1993 the Court granted my trial counsel, Louis J. Barnes leave to withdraw as my attorney in this cause, pursuantto his Motion to Withdraw.

7. The Court's Order of February 9, 1993 allowed me leave to file my Supplemental Appearance.

8. That in his Motion to Withdraw, Mr. Barnes accurately stated that during the course of his representation of me, "irreconcilable differences " had arisen between Mr. Barnes and myself.

9. These irreconcilable differences were founded on my desire to pursue appellate review of the Judgment entered in this cause: Mr. Barnes did not feel that appellate review of the Judgment Order entered in this cause on October 23, 1992 was warranted, I felt that errors had been committed in the proceedings below,including the offset awarded defendant for my alleged "contributory negligence."

10. That my previous counsel did not cooperate with me in taking all steps necessary to perfect an appeal of the judgment, due to the above mentioned "irreconcilable differences."

11. That on or about March 10, 1993, pursuant to the Court's Order of February 9, 1993, I retained new counsel, who on March 11, 1993 filed his Supplemental Appearance on my behalf.

12. That said new counsel and I do not have the same "irreconcilable differences" with respect to pursuit of appellate review of this cause.

Further affiant sayeth naught.

*Edith Beasley*
Edith Beasley

Subscribed and sworn to before
me this 18th day of
March, 1993.

_____
Notary Public

## FIFTH AMENDMENT TO THE CONSTITUTION OF THE UNITED STATES

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, on in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

## FOURTEENTH AMENDMENT TO THE CONSTITUTION OF THE UNITED STATES

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.